

BB

*IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IDAHO  
EASTERN DIVISION*

**FILED**

JUN 20 2008 aew  
JUN 20, 2008  
MICHAEL W. COBBING  
CLERK, U.S. DISTRICT COURT

CASE NO. 07C6853

UNITED STATES OF AMERICA ex rel )  
KEVIN PATTERSON )  
PETITIONER )  
✓  
GENE TUNGWIRTH, WARDEN )  
RESPONDENT )  
THE HONORABLE  
JOAN D. GOTTSCHALK  
JUDGE PRESIDING

---

MOTION FOR RELIEF FROM JUDGEMENT

Now comes KEVIN PATTERSON, pro-se and PETITIONER in the above numbered cause pursuant to F.R.A.P Rule 60(b) requesting this Honorable Court to RECONSIDER the finding outlined in it's order issued on MAY 16, 2008, dismissing PETITIONER'S HABEAS APPEAL. In support of PETITIONER'S MOTION, he states as follows.

- 1) KEVIN PATTERSON, pro-se is the PETITIONER in the CAUSE before this COURT under CASE NO. 07C6853.
- 2) ON 5-16-08, this HONORABLE COURT GRANTED RESPONDENTS MOTION to DISMISS PETITIONER'S HABEAS CORPUS APPEAL PETITION AS UNTIMELY.

- 3) IN DETERMINING THE PERIOD AND AMOUNT OF TIME WHICH ELAPSED THAT GAVE RISE TO THE SEEKINGLY UNTIMELY FILING OF PETITIONER'S HABEAS PETITION, THE COURT THAT PETITIONER'S CONVICTION BECAME FINAL ON THE STATE LEVEL ON MARCH 3, 2004. THIS DATE INCLUDED THE DATE THE ILLINOIS SUPREME COURT'S ORDER ON CASE NO. 96900, DATED 12-3-03. THIS ORDER SEEMED TO HAVE DENIED PETITIONER'S APPEAL BASED ON THE COURT'S DISCRETIONARY REVIEW AUTHORITY, (SEE EXHIBIT "A"), ALONG WITH THE 90 DAY PERIOD DURING WHICH A STATE PRISONER COULD FILE A PETITION FOR WRIT OF CERTIORARI PURSUANT TO 28 USC 2244 (d)(1).
- 4) IN 2007, PETITIONER REQUESTED AND RECEIVED A COPY OF THE CERTIFIED STATEMENT OF CONVICTION/ DISPOSITION TO ATTACH TO HIS HABEAS PETITION. ON PAGE 008, (SEE EXHIBIT "B") OF THE DISPOSITION, THE ENTRY DATED 10-03-03 STATES THAT THE PETITIONER'S APPEAL TO THE ILLINOIS SUPREME COURT WAS DISMISSED FOR LACK OF JURISDICTION RATHER THAN DISCRETIONARY REVIEW.
- 5) THE NOTICE RECEIVED FROM THE CLERK OF THE ILLINOIS SUPREME COURT STATED ONLY THAT THE PETITION FOR LEAVE TO APPEAL WAS DENIED. A STANDARD FORM DENIAL WHEN THE COURT INVOKES IT'S DISCRETIONARY REVIEW AUTHORITY,

- 4) THE PETITION TO THE ILLINOIS SUPREME COURT WAS FILED WITH THE DIRECTION AND ASSISTANCE OF PETITIONER'S ATTORNEY IN AUGUST, 2003 APPEALING THE AFFIRMED PORTION OF HIS APPEAL, CASE NO. 02-0694. PETITIONER'S ATTORNEY, ASST. PUBLIC DEFENDER EMILY EISNER GAVE PETITIONER DIRECTIONS (SEE EXHIBIT C,D) AND FILED THE NECESSARY AFFIDAVIT OF INTENT PURSUANT TO RULE 315(6) FOR PETITIONER. (SEE EXHIBIT "E")
- 7) PETITIONER WAS MISLED BY HIS ATTORNEY, EMILY EISNER WHO DIRECTED THIS PETITIONER TO FILE A FRIVOLOUS APPEAL TO THE ILLINOIS SUPREME COURT, SINCE THE SENTENCE OF PETITIONER'S CONVICTION HAD BEEN VACATED AND THE CASE HAD BEEN REMANDED BACK TO THE CIRCUIT COURT FOR RESENTENCING.  
THE PETITIONER WAS FURTHER MISLED BY THE DENIAL ORDER FROM THE SUPREME COURT.
- 8) THERE WAS NO FINALITY ON PETITIONER'S DIRECT APPEAL UNTIL AFTER HIS RESENTENCING HEARING ON JUNE 17, 2004 (SEE EXHIBIT "B", PG.009) AND THE SUBSEQUENT APPEAL THAT FOLLOWED UNDER CASE NO. 04-2140.
- 9) THE 266 DAYS THE RESPONDENT RELYS ON TO SUPPORT THEIR CONTENTION THAT PETITIONER'S

APPEAL WAS UNTIMELY NEVER OCCURRED. AT ALL TIMES DURING THAT PERIOD, PETITIONER WAS GOING THROUGH COURT PROCEDURES PURSUANT TO HIS DIRECT APPEAL.

- (10) ON DECEMBER 21, 2004 PETITIONER FILED A POST CONVICTION PETITION IN THE CIRCUIT COURT OF COOK COUNTY (SEE EXHIBIT "B" PG. 010). AT THE TIME OF FILING OF THIS PETITION, THE PETITIONER'S DIRECT APPEAL FROM HIS RESENTENCING WAS STILL PENDING.
- (11) ON FEBRUARY 25, 2005 PETITIONER'S POST CONVICTION PETITION WAS DENIED AND A TRUTHY NOTICE OF APPEAL WAS FILED ON 3-16-05. (SEE EXHIBIT "B", PG 011)
- (12) THE STATE APPELLATE DEFENDERS OFFICE WAS ASSIGNED TO REPRESENT THE PETITIONER ON BOTH APPEALS, HIS DIRECT APPEAL (AFTER THE RESENTENCING, CASE NO (04-2140) AND HIS POST CONVICTION APPEAL (05-0847). ASSISTANT APPELLATE DEFENDER DEBRA LOENY-REYES WAS ASSIGNED TO BOTH APPEALS.
- (13) AFTER RESENTENCING, PETITIONER WAS RETURNED TO THE ILLINOIS DEPARTMENT OF CORRECTIONS AND ULTIMATELY PLACED AT THE TAYLORVILLE CORRECTIONAL CENTER IN AUGUST, 04.

- 14) PETITIONER WAS REPRESENTED by COUNSEL DEBRA LOEUY-REYES ON his RESENTENCING APPEAL UNTIL MARCH 29, 2006, THE APPELLATE COURT AFFIRMANCE of PETITIONER'S RESENTENCING APPEAL.
- 15) PETITIONER ATTEMPTED to Appeal his RESENTENCING APPEAL to the ILLINOIS SUPREME COURT. BUT due to the ABSENCE of a REGULAR LIBRARIAN, this CREATED an IMPEDIMENT which PREVENTED this PETITIONER from EFFECTUATING a timely APPEAL to the ILLINOIS SUPREME COURT on APPEAL, CASE NO. 04-2140.
- 16) TAYLORVILLE CORRECTIONAL CENTER (TCC) WMS without a REGULAR LIBRARIAN from 12-31-05 until PETITIONER's transfer to EAST MOLINE CORRECTIONAL CENTER (EMCC) APRIL 25, 2007.
- 17) FROM 12-31-05 to APRIL 25, 2007, the true PETITIONER could get ACCESS to the LAW LIBRARY diminished to less than AN HOUR A WEEK in MANY instances. LAW BOOKS WERE STOLEN and CASE LAW WAS RIPPED from LAW BOOKS.
- 18) Before PETITIONER was forced to pro-se litigate his APPEAL, URGENCY was NOT an ISSUE. WHEN HIS APPEAL ATTORNEY WITHDREW from his APPEAL, CASE NO. 04-2140, PETITIONER ATTEMPTED to APPEAL to the ILL. SUP Ct. HE EVEN FILED A MOTION FOR EXTENSION OF TIME. (SEE EXHIBIT "F")

- (19) PETITIONER WAS STILL UNABLE TO FILE HIS APPEAL IN THE ILL. SUPREME COURT. SO, WHEN THE MANDATE WAS ISSUED FROM THE SUPREME COURT ON PETITIONERS POST CONVICTION APPEAL, PETITIONER FOCUSED ATTENTION ON PREPARING A FEDERAL HABEAS PETITION (SEE EXHIBIT "G")
- (20) PETITIONER REQUESTED A TRANSFER FROM TCC TO EMCC SPECIFICALLY FOR BETTER ACCESS TO A NEW LIBRARY FACILITY. THE REQUEST WAS GRANTED AND PETITIONER WAS TRANSFERRED TO EMCC ON 4-25-07.
- (21) AT EMCC, ONE LIBRARIAN IS EMPLOYED. THE LIBRARY IS OPEN ON TUESDAY'S, THURSDAY AND FRIDAY FROM COURT CHECK (BETWEEN 1:30-2PM) UNTIL 2:45PM AND AFTER EVENING HEARINGS (BETWEEN 5:30-6PM) TO 7:30PM, AND ON WEDNESDAY DURING THE ABOVE EVENING HOURS ONLY. THE LIBRARY IS CLOSED DURING THE LIBRARIAN'S OFF DAYS, MONDAYS AND HOLIDAYS.
- (22) FROM 4-25-07 TO THE FILING OF PETITIONER'S HABEAS PETITION, THE LIBRARY WAS CLOSED A TOTAL OF #21 DAYS DUE TO THE LIBRARIAN'S OFF DAYS. FIVE (5) DAYS IN OCTOBER, "07" THE INSTITUTION WAS ON LOCKDOWN. (SEE EXHIBIT "H")

23) THE PETITIONER APPLIED DILIGENCE IN EVERY SITUATION THAT REQUIRED HIS CONFORMITY TO COURT DEADLINES AND DUE DATES WHEN IT WAS SITUATIONALLY FEASIBLE TO DO SO.

24) PETITIONER FURTHER ASSERTS THAT, IF NOT FOR THE UNFORSEEN CIRCUMSTANCE OF THE TAYLORVILLE LIBRARIAN LEAVING THUS CREATING THE UNCERTAINTY, INCONSISTENCY AND OFTEN FAILURE TO OPEN THE LAW LIBRARY, ANY UNTIMELINESS OF FILING HIS APPEAL IN THE FEDERAL COURTS WOULD NOT HAVE OCCURRED.  
WALKER V NORRIS 436 F.3d 1026

WHEREFORE, PETITIONER ASK THIS HONORABLE COURT TO GRANT THIS PETITIONER EQUITABLE TOLLING DUE TO CIRCUMSTANCES OUTSIDE OF HIS CONTROL AND TO VACATE ITS PREVIOUS JUDGEMENT DISMISSING PETITIONER'S APPEAL.

cc: Kevin Patterson  
KEVIN PATTERSON

96900

**SUPREME COURT OF ILLINOIS**  
**CLERK OF THE COURT**  
**SUPREME COURT BUILDING**  
**SPRINGFIELD, ILLINOIS 62701**  
**(217) 782-2035**

December 3, 2003

Mr. Kevin Patterson  
Reg. No. A-83515  
P. O. Box 1900  
Canton, IL 61520

No. 96900 - People State of Illinois, respondent, v. Kevin Patterson, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 26, 2003.

Exhibit "A"



Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 W. WASHINGTON • 15<sup>TH</sup> FLOOR • CHICAGO, IL 60602 • (312)603-0600

Edwin A. Burnette • Public Defender

July 7, 2003

Mr. Kevin Patterson  
Reg. no. A-83515  
Box 999  
Illinois River Correctional Center  
Rt. 9 West  
Canton, IL 61520

Dear Mr. Patterson:

As we discussed at length this afternoon, I have determined that there is no merit to a rehearing petition or a petition for leave to the Illinois Supreme Court.

I have sent you a copy of the supreme court case that the appellate court cited from 1927 finding no fatal variance between an indictment charging an armed robbery from the "person" and the proof of an armed robbery from the "presence."

If you choose on your own to appeal to the Supreme Court, your petition is required by Supreme Court Rule to be one of the following:

- 1) to raise an issue conflicting with an opinion of another district or division in Illinois;
- 2) to raise an issue conflicting with a decision of the Illinois Supreme Court; or
- 3) a case of public importance.

As you know, the appellate court has granted you a new sentencing hearing. Because of this, I must also advise you that if the supreme court agrees to hear your pro se petition, the supreme court could overturn the appellate court and decide that you are not entitled to a new sentencing hearing. This could happen because the State would have nothing to lose by "cross-appealing" if the supreme court has already decided to hear the case.

Exhibit "C"  
Pg. 1 of 2

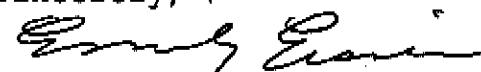
I am not saying that I think this would happen. I have already told you that I believe it is unlikely that the State would be petitioning the supreme court on its own. But there is some danger that you would have to re-fight the sentencing issue, especially because the appellate court addressed it under the "plain error" doctrine. This is simply something you should be aware-of (in the unlikely event that the Supreme Court chooses to hear your appeal of the attempt armed robbery conviction).

If you do choose to file a supreme court petition, it must be filed no later than July 24<sup>th</sup> and be sent to:

Ms. Juleann Hornyak  
Supreme Court Clerk  
200 E. Capitol Street  
Springfield, Illinois 62701

As you already know, I will also need to hear from you on July 10<sup>th</sup> by 3:00 p.m. so I can file the necessary paperwork on-time that I told you about over the telephone.

Sincerely,



Emily Eisner,  
Assistant Public Defender

Exhibit C  
pg. 2 of 2



Law Office of the  
COOK COUNTY PUBLIC DEFENDER  
69 W. WASHINGTON • 15<sup>TH</sup> FLOOR • CHICAGO, IL 60602 • (312)603-0600

Edwin A. Burnette • Public Defender

July 10, 2003

Mr. Kevin Patterson  
Reg. no. A-83515  
Box 999  
Illinois River Correctional Center  
Rt. 9 West  
Canton, IL 61520

Dear Mr. Patterson:

I received your four phone messages from today and yesterday and have timely filed your "affidavit of intent" for you, as you requested.

Enclosed please find your copy. Your will need to include a copy of this "affidavit of intent" in the Appendix to your pro se petition in the Supreme Court. (The Appendix must also include a copy of the appellate court's decision, and you will need to follow the format of Rule 315(a) as closely as possible, as I set-out for you in my last letter that you have now received). As you know, your pro se petition is due no later than Thursday July 24<sup>th</sup> (that is, it must be post-marked by then).

To answer your question, the appellate court is not actually ignoring or expanding or changing the legislature's definition of robbery or of attempt armed robbery. Rather, the legislature has defined takings from the "person or presence" in the alternative, which is why you have the "or" language. The legislature is saying that there are two ways to commit robbery (i.e. takings from the "person or presence")--that really are not all that different most of the time, and are both considering robberies. That is why the courts would unfortunately tend to view a variance from "person" to "presence" as not "material." Put another way, the essence of robbery and attempt robbery (or attempt armed robbery) is the forceful intimidation of the alleged victim to scare him into parting with, or cause him to part with, something of value. What the valuable property is--or where it is located--is not considered all that significant as far as the legislature's definition of the crime is concerned.

The legislature prefers to give as broad a definition as

Exhibit "D"  
PG. 1 of 2

possible (without being so broad as to run afoul of the due process clause) in order to rope-in as many violators or, more delicately-said, proscribe as many types of "robberies" as possible.

As I said in my last letter, your petition, which must be mailed no later than July 24<sup>th</sup>, must be sent to:

Ms. Juleann Hornyak  
Supreme Court Clerk  
200 E. Capitol Street  
Springfield, Illinois 62701

This letter also must serve as a formal closing-out of my appellate file, but I shall continue to be here to answer your questions and calls. I will also be here to make sure your case gets redocketed for your new sentencing hearing where you should be appointed a trial attorney to represent you.

Sincerely,

*Emily Eisner*  
Emily Eisner,  
Assistant Public Defender

Exhibit "D"  
pg 2 of 2

STATE OF ILLINOIS      )  
                         ) ss  
 COUNTY OF COOK        )

---

IN THE APPELLATE COURT, STATE OF ILLINOIS  
 FIRST DISTRICT, FOURTH DIVISION

PEOPLE OF THE STATE OF ILLINOIS,      )  
                         )  
 Plaintiff-Appellee,                    )  
                         )  
 vs.                                     )      No. 02-0694  
 KEVIN PATTERSON,                      )  
                         )  
 Defendant-Appellant.                )

AFFIDAVIT OF INTENT TO FILE A PRO SE PETITION FOR  
 LEAVE TO APPEAL TO THE ILLINOIS SUPREME COURT

Pursuant to Supreme Court Rule 315(b), EMILY EISNER, Assistant Public Defender for defendant-appellant KEVIN PATTERSON in the above-entitled cause, states as follows:

1. That I have been the attorney for the defendant-appellant in the above-entitled cause.
2. That on June 19, 2003, this Court granted the defendant-appellant a new sentencing hearing but affirmed his conviction.
3. That he has informed me that he intends to file a pro se petition for leave to appeal from the part of this Court's judgment affirming his conviction.
4. That he has authorized me to file this notice of intent.

By: Emily E  
 EMILY EISNER  
 For Kevin Patterson

SUBSCRIBED and SWORN TO  
 Before me this 10th day  
 of July, A.D., 2003.

L'Amour Holloway-White  
 Notary Public

Exhibit "E"





SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING

SPRINGFIELD 62701

JULEANN HORNYAK  
CLERK OF THE COURT  
(217) 782-2035

May 5, 2006

FIRST DISTRICT OFFICE  
20TH FLOOR  
180 N. LASALLE ST.  
CHICAGO 60601  
(312) 793-1332

TELECOMMUNICATIONS DEVICE  
FOR THE DEAF  
(217) 524-8132

Mr. Kevin Patterson  
Reg. No. A-83515  
P. O. Box 900  
Taylorville, Illinois 62568

TELECOMMUNICATIONS DEVICE  
FOR THE DEAF  
(312) 793-6185

Re: People State of Illinois, appellee, v. Kevin Patterson, appellant.  
Appellate Court, First District, No. 1-04-2140.

Dear Mr. Patterson:

This will acknowledge receipt of your motion for an extension of time to file a petition for leave to appeal in the above-referenced cause on May 2, 2006.

You have been given until June 7, 2006, to file a timely petition for leave to appeal. It is suggested that your petition should contain a statement of the facts concerning your case, such as indictment number, crime, date and length of sentence and reasons why you feel you are entitled to review by the Supreme Court. A copy of the Appellate Court decision and, if applicable, the order denying your petition for rehearing should be attached to your material, all of which should then be forwarded to this office as soon as possible.

In the event your petition is not timely, you should include with your petition a motion for leave to file a late petition for leave to appeal, explaining the reasons why you were unable to timely file.

A copy of each document should be served on the Attorney General of the State of Illinois (Hon. Lisa Madigan, Attorney General, Criminal Appeals Division, 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601) and the State's Attorney of the county of conviction.

Your petition for leave to appeal should be brought to the Court under Supreme Court Rule 315, a copy of which is enclosed for your information. Please note the 20-page limitation.

Very truly yours,

*Juleann Hornyak*  
JULEANN HORNYAK, Clerk

JH:jak  
Enclosure

Exhibit "F"

102994

**SUPREME COURT OF ILLINOIS  
CLERK OF THE COURT  
SUPREME COURT BUILDING  
SPRINGFIELD, ILLINOIS 62701  
(217) 782-2036**

September 27, 2006

Ms. Debra Loevy-Reyes  
Assistant Appellate Defender  
203 North LaSalle Street  
24th Floor  
Chicago, IL 60601

No. 102994 - People State of Illinois, respondent, v. Kevin Patterson, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on November 2, 2006.

**RECEIVED**  
SEP 28 2006

DOCKETING DEPARTMENT  
State Appellate Defender, 1st District

Exhibit "G"

7-3-07	1 day) <u>Burley</u>
7-5 + 6-07	2 days) 1 week July 2-6
7-27-07	1 day Fri
7-31-07	1 day Tues
8-1-2-3-07	3 days wed, Thurs Fri
9-25-26-27-28	4 days Sat 24-28 1 week 5
11-6-7-8-9, 2007	4 days 1 week now 5-9
11-20-21-22-23	2 days Sun Wed 1 week 11-17
Exhibit "H"	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 001

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN

PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

720-5/9-1(A) (1)	F (ATT) MURDER/INTENT TO KILL/INJ
720-5/24-1.2(A) (2)	F AGG DISCHARGE FIREARM/OCC
A 720-5/8-4 (720-5/18-1(A))	F ATTEMPT ARMED ROBBERY
720-5/18-2(A)	F (ATT) ARMED ROBBERY
720-5/18-2(A)	F (ATT) ARMED ROBBERY
720-5/24-1.1(A)	F FELON POSS/USE WEAPON/FIR
720-5/24-1.1(A)	F FELON POSS/USE WEAPON/FIR
720-5/24-1(A) (4)	F CARRY/POSSESS FIREARM/1ST
720-5/24-1(A) (10)	F CARRY/POSSES FIREARM IN P

The following disposition(s) was/were rendered before the Honorable Judge(s):

12/04/98 IND/INFO-CLK OFFICE-PRES JUDGE 12/21/98 1701  
98CR3006401 ID# CR100821510

12/21/98 CASE ASSIGNED 12/21/98 1731  
FITZGERALD, THOMAS R.

12/21/98 DEFENDANT ON BOND  
HIMEL, RONALD A.

12/21/98 PUBLIC DEFENDER APPOINTED  
HIMEL, RONALD A.

12/21/98 MOTION FOR DISCOVERY F 1  
HIMEL, RONALD A.

12/21/98 CONTINUANCE BY AGREEMENT 01/15/99  
HIMEL, RONALD A.

01/15/99 CONTINUANCE BY AGREEMENT 02/22/99  
HIMEL, RONALD A.

02/22/99 DEFENDANT ON BOND  
HIMEL, RONALD A.

02/22/99 CONTINUANCE BY AGREEMENT 03/25/99  
HIMEL, RONALD A.

03/25/99 DEFENDANT ON BOND  
DARCY, DANIEL P.

03/25/99 CONTINUANCE BY AGREEMENT 04/29/99  
DARCY, DANIEL P.

Exhibit "B"  
1-12  
PAGES

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
PEOPLE OF THE STATE OF ILLINOIS

Page 002

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION  
04/29/99 DEFENDANT ON BOND

HIMEL, RONALD A.

04/29/99 CONTINUANCE BY AGREEMENT 06/15/99

HIMEL, RONALD A.

06/15/99 CONTINUANCE BY AGREEMENT 07/22/99

HIMEL, RONALD A.

07/22/99 DEFENDANT ON BOND

HIMEL, RONALD A.

07/22/99 CONTINUANCE BY AGREEMENT 08/13/99

HIMEL, RONALD A.

08/13/99 MOTION DEFT - CONTINUANCE - MD 09/30/99

HIMEL, RONALD A.

09/30/99 DEFENDANT ON BOND

HIMEL, RONALD A.

09/30/99 CONTINUANCE BY AGREEMENT 11/10/99

HIMEL, RONALD A.

11/10/99 DEFENDANT ON BOND

GARCIA, RODOLFO

11/10/99 CONTINUANCE BY AGREEMENT 12/15/99

GARCIA, RODOLFO

12/15/99 DEFENDANT ON BOND 00/00/00

HIMEL, RONALD A.

12/15/99 CONTINUANCE BY AGREEMENT 01/28/00

HIMEL, RONALD A.

01/28/00 DEFENDANT ON BOND 00/00/00

HIMEL, RONALD A.

01/28/00 CONTINUANCE BY AGREEMENT 03/02/00

HIMEL, RONALD A.

03/02/00 DEFENDANT ON BOND 00/00/00

HIMEL, RONALD A.

03/02/00 CONTINUANCE BY AGREEMENT 04/05/00

HIMEL, RONALD A.

04/05/00 DEFENDANT ON BOND 00/00/00

HIMEL, RONALD A.

04/05/00 CONTINUANCE BY AGREEMENT 04/17/00

HIMEL, RONALD A.

04/17/00 DEFENDANT ON BOND 00/00/00

HIMEL, RONALD A.

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 003

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION  
04/17/00 CONTINUANCE BY AGREEMENT 05/08/00  
HIMEL, RONALD A.  
05/08/00 CONTINUANCE BY AGREEMENT 06/15/00  
HIMEL, RONALD A.  
06/15/00 CONTINUANCE BY AGREEMENT 07/24/00  
HIMEL, RONALD A.  
07/24/00 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
07/24/00 CONTINUANCE BY AGREEMENT 08/29/00  
HIMEL, RONALD A.  
08/29/00 WITNESSES ORDERED TO APPEAR 00/00/00  
HIMEL, RONALD A.  
08/29/00 CONTINUANCE BY AGREEMENT 10/05/00  
HIMEL, RONALD A.  
10/05/00 DISCOVERY ANSWER FILED 00/00/00 2  
HIMEL, RONALD A.  
10/05/00 CONTINUANCE BY AGREEMENT 11/08/00  
HIMEL, RONALD A.  
11/08/00 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
11/08/00 CONTINUANCE BY AGREEMENT 12/15/00  
HIMEL, RONALD A.  
12/15/00 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
12/15/00 CONTINUANCE BY AGREEMENT 01/26/01  
HIMEL, RONALD A.  
01/26/01 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
01/26/01 CONTINUANCE BY AGREEMENT 03/06/01  
HIMEL, RONALD A.  
03/06/01 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
03/06/01 CONTINUANCE BY AGREEMENT 04/11/01  
HIMEL, RONALD A.  
04/11/01 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
04/11/01 CONTINUANCE BY AGREEMENT 05/14/01  
HIMEL, RONALD A.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 004

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
05/14/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
05/14/01 WITNESSES ORDERED TO APPEAR	00/00/00
HIMEL, RONALD A.	
05/14/01 CONTINUANCE BY AGREEMENT	07/02/01
HIMEL, RONALD A.	
07/02/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
07/02/01 WITNESSES ORDERED TO APPEAR	00/00/00
HIMEL, RONALD A.	
07/02/01 CONTINUANCE BY AGREEMENT	08/13/01
HIMEL, RONALD A.	
08/13/01 DEFENDANT ON BOND	00/00/00
FLEMING, JOHN J.	
08/13/01 CONTINUANCE BY AGREEMENT	08/17/01
FLEMING, JOHN J.	
08/17/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
08/17/01 WITNESSES ORDERED TO APPEAR	00/00/00
HIMEL, RONALD A.	
08/17/01 CONTINUANCE BY AGREEMENT	09/24/01
HIMEL, RONALD A.	
09/24/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
09/24/01 WITNESSES ORDERED TO APPEAR	00/00/00
HIMEL, RONALD A.	
09/24/01 MOTION STATE - CONTINUANCE -MS	11/02/01
HIMEL, RONALD A.	
11/02/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
11/02/01 WITNESSES ORDERED TO APPEAR	00/00/00
HIMEL, RONALD A.	
11/02/01 CONTINUANCE BY AGREEMENT	11/06/01
HIMEL, RONALD A.	
11/06/01 DEFENDANT ON BOND	00/00/00
HIMEL, RONALD A.	
11/06/01 PLEA OF NOT GUILTY	00/00/00
HIMEL, RONALD A.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
PEOPLE OF THE STATE OF ILLINOIS

Page 005

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION  
11/06/01 JURY WAIVED 00/00/00  
HIMEL, RONALD A.  
11/06/01 WITNESSES ORDERED TO APPEAR 00/00/00  
HIMEL, RONALD A.  
11/06/01 CONTINUANCE BY AGREEMENT 11/14/01  
HIMEL, RONALD A.  
11/14/01 WITNESSES ORDERED TO APPEAR 00/00/00  
HIMEL, RONALD A.  
11/14/01 TRIAL COMENCED AND CONTINUED 11/21/01  
HIMEL, RONALD A.  
11/21/01 DEFENDANT ON BOND 00/00/00  
HIMEL, RONALD A.  
11/21/01 PLEA OF NOT GUILTY 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF NOT GUILTY C001 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF NOT GUILTY C002 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF GUILTY C003 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF GUILTY C004 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF GUILTY C005 00/00/00  
HIMEL, RONALD A.  
11/21/01 FINDING OF GUILTY C006 00/00/00  
HIMEL, RONALD A.  
11/21/01 JGMT ON FINDING/VERDICT/PLEA 00/00/00 F  
HIMEL, RONALD A.  
11/21/01 BAIL REVOKED 00/00/00  
HIMEL, RONALD A.  
11/21/01 DEF REM CUST CC SHERIF 00/00/00  
HIMEL, RONALD A.  
11/21/01 DEFENDANT IN CUSTODY 00/00/00  
HIMEL, RONALD A.  
11/21/01 PRISONER DATA SHEET TO ISSUE 00/00/00  
HIMEL, RONALD A.  
11/21/01 PRE-SENT INVEST. ORD, CONTD TO 00/00/00  
HIMEL, RONALD A.



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 007

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
02/04/02 PUBLIC DEF APPTD FOR APPEAL	00/00/00
HIMEL, RONALD A.	
02/04/02 DEF ADVISED OF RIGHT TO APPEAL	00/00/00
HIMEL, RONALD A.	
02/04/02 LET MITTIMUS ISSUE/MITT TO ISS	00/00/00
HIMEL, RONALD A.	
02/04/02 CHANGE PRIORITY STATUS	M 00/00/00
HIMEL, RONALD A.	
02/06/02 NOTICE OF APPEAL FILED, TRNSFR	00/00/00
02/26/02 NOTICE OF NOTICE OF APP MAILED	00/00/00
02/26/02 HEARING DATE ASSIGNED	03/01/02 1713
02/22/02 REPT OF PRCDS ORD FR CRT RPT	00/00/00
03/01/02 PUBLIC DEF APPTD FOR APPEAL	00/00/00
BIEBEL, PAUL JR.	
03/01/02 O/C FREE REPT OF PROCD ORD N/C	00/00/00
BIEBEL, PAUL JR.	
03/01/02 MEMO OF ORDS & NOA PICKED-UP	00/00/00
BIEBEL, PAUL JR.	
03/20/02 APPELLATE COURT NUMBER ASGND	00/00/00 02-0694
03/21/02 COMMON LAW RECORD PREPARED	00/00/00
03/27/02 CLR RECD BY APP COUNSEL	00/00/00
PUBLIC DEFENDER	
06/11/02 TRANS PROC REC/FILED CLKS OFF	00/00/00
06/12/02 REPORT OF PROCEEDINGS PREPARED	00/00/00
06/14/02 REPRT/PROCD RECD BY APP ATTRY	00/00/00
PUBLIC DEFENDER	
06/14/02 REPT OF PRCDS ORD FR CRT RPT	00/00/00
08/01/02 SUPP TRAN PRO REC/FILE CLK OFF	00/00/00
08/05/02 SUPPL REPORT OF PROCD PREPARED	00/00/00
08/07/02 SUPPL REC RECD BY APPL COUNSEL	00/00/00
PUBLIC DEFENDER	
08/28/03 MANDATE FILED	09/09/03 1701
09/09/03 CASE ASSIGNED	09/23/03 1731
CONVICTION AFFIRMED/RE-SENTENCING	
WOOD, WILLIAM S.	
09/12/03 MANDATE FILED	09/23/03 1701
→09/23/03 MANDATE RECALLED	08/21/03
BIEBEL, PAUL JR.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 008

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

→09/23/03 DEFENDANT IN CUSTODY	00/00/00
IN I.D.O.C. CUSTODY	
DARCY, DANIEL P.	
09/23/03 PRISONER DATA SHEET TO ISSUE	00/00/00
DARCY, DANIEL P.	
09/23/03 PUBLIC DEFENDER APPOINTED	00/00/00
DARCY, DANIEL P.	
09/23/03 MOTION DEFT - CONTINUANCE - MD	10/03/03
DARCY, DANIEL P.	
10/03/03 SPECIAL ORDER	00/00/00
DEFENDANT'S APPEAL TO SUPREME COURT / NO JURIS ICITION	
DARCY, DANIEL P.	
10/03/03 SPECIAL ORDER	00/00/00
OFF CALL	
DARCY, DANIEL P.	
01/09/04 MANDATE FILED	01/22/04 1701
01/22/04 SPECIAL ORDER	00/00/00
CONVICTIONS AFFIRMED - RESENTENCING	
BIEBEL, PAUL JR.	
01/22/04 CASE ASSIGNED	02/05/04 1731
BIEBEL, PAUL JR.	
02/05/04 DEFENDANT IN CUSTODY	00/00/00
DARCY, DANIEL P.	
02/05/04 PRISONER DATA SHEET TO ISSUE	00/00/00
DARCY, DANIEL P.	
02/05/04 PUBLIC DEFENDER APPOINTED	00/00/00
DARCY, DANIEL P.	
02/05/04 DEF REM CUST CC SHERIF	00/00/00
DARCY, DANIEL P.	
02/05/04 NO BAIL	00/00/00
DARCY, DANIEL P.	
02/05/04 CONTINUANCE BY AGREEMENT	02/23/04
DARCY, DANIEL P.	
02/23/04 DEFENDANT IN CUSTODY	00/00/00
DARCY, DANIEL P.	
02/23/04 PRISONER DATA SHEET TO ISSUE	00/00/00
DARCY, DANIEL P.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 PEOPLE OF THE STATE OF ILLINOIS

Page 009

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
02/23/04 PUBLIC DEFENDER APPOINTED	00/00/00
DARCY, DANIEL P.	
02/23/04 CONTINUANCE BY AGREEMENT	03/18/04
DARCY, DANIEL P.	
03/18/04 DEFENDANT IN CUSTODY	00/00/00
MEYER, WAYNE	
03/18/04 PRISONER DATA SHEET TO ISSUE	00/00/00
MEYER, WAYNE	
03/18/04 PRE-SENT INVEST. ORD, CONTD TO	00/00/00
MEYER, WAYNE	
03/18/04 CONTINUANCE BY AGREEMENT	04/20/04
MEYER, WAYNE	
04/20/04 DEFENDANT IN CUSTODY	00/00/00
DARCY, DANIEL P.	
04/20/04 PRISONER DATA SHEET TO ISSUE	00/00/00
DARCY, DANIEL P.	
04/20/04 CONTINUANCE BY AGREEMENT	05/20/04
DARCY, DANIEL P.	
05/20/04 DEFENDANT IN CUSTODY	00/00/00
DARCY, DANIEL P.	
05/20/04 PRISONER DATA SHEET TO ISSUE	00/00/00
DARCY, DANIEL P.	
05/20/04 CONTINUANCE BY AGREEMENT	06/17/04
DARCY, DANIEL P.	
06/17/04 DEFENDANT IN CUSTODY	00/00/00
DARCY, DANIEL P.	
06/17/04 DEF SENTENCED ILLINOIS DOC	C003 00/00/00
RESENTENCED	
18 YRS	
DARCY, DANIEL P.	
06/17/04 CREDIT DEFENDANT FOR TIME SERV	00/00/00
864 DYS	
DARCY, DANIEL P.	
08/19/04 NOTICE OF APPEAL FILED, TRNSFR	00/00/00
08/19/04 NOTICE OF NOTICE OF APP MAILED	00/00/00
08/19/04 HEARING DATE ASSIGNED	08/27/04 1713
09/01/04 APPELLATE COURT NUMBER ASGND	00/00/00 04-2140

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 010

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
08/27/04 ILL STATE APPELLATE DEF APPTD	00/00/00
BIEBEL, PAUL JR.	
08/27/04 O/C FREE REPT OF PROCD ORD N/C	00/00/00
BIEBEL, PAUL JR.	
08/27/04 MEMO OF ORDS & NOA PICKED-UP	00/00/00
BIEBEL, PAUL JR.	
09/15/04 COMMON LAW RECORD PREPARED	00/00/00
09/16/04 REPT OF PRCDS ORD FR CRT RPT	00/00/00
10/04/04 CLR RECD BY APP COUNSEL	00/00/00
STATE APPELLATE DEFENDER	
12/07/04 SPECIAL ORDER	00/00/00 F                  2
MOTION IN ARREST OF JUDGEMENT & C.L.R.	
12/07/04 HEARING DATE ASSIGNED	12/10/04 1731
12/10/04 SPECIAL ORDER	00/00/00
CLERK TO SEND COPY OF COMPLAINT FOR P.H. FILED ON 10/3/98 & P.T. MOTIONS	
PANTLE, KATHLEEN M.	
12/10/04 SPECIAL ORDER	00/00/00
OFF CALL	
PANTLE, KATHLEEN M.	
12/02/04 POST-CONVICTION FILED	00/00/00
12/02/04 HEARING DATE ASSIGNED	12/16/04 1701
12/16/04 CASE ASSIGNED	12/16/04 1731
BIEBEL, PAUL JR.	
12/16/04 CONTINUANCE BY ORDER OF COURT	12/29/04
DARCY, DANIEL P.	
12/29/04 CONTINUANCE BY ORDER OF COURT	01/07/05
DARCY, DANIEL P.	
01/07/05 CONTINUANCE BY ORDER OF COURT	01/14/05
DARCY, DANIEL P.	
01/14/05 CONTINUANCE BY ORDER OF COURT	01/28/05
DARCY, DANIEL P.	
01/27/05 REPT OF PRCDS ORD FR CRT RPT	00/00/00
01/28/05 CONTINUANCE BY ORDER OF COURT	02/18/05
DARCY, DANIEL P.	
02/07/05 TRANS PROC REC/FILED CLKS OFF	00/00/00
02/17/05 REPRT/PROCDIS RECD BY APP ATTRY	00/00/00
STATE APPELLATE DEFENDER	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 011

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION  
 02/18/05 CONTINUANCE BY ORDER OF COURT 02/28/05  
 DARCY, DANIEL P.  
 02/15/05 REPORT OF PROCEEDINGS PREPARED 00/00/00  
 02/25/05 POST-CONV PETITION DENIED 00/00/00  
 MOTION FIVOLOUS AMD PATENTLY WTHOT MERIT, AND PROCEED IN FORMUA PAUPERIS  
 DARCY, DANIEL P.  
 02/28/05 PREVIOUS ORDER TO STAND 02/25/05  
 OFF CALL  
 DARCY, DANIEL P.  
 02/28/05 NOTIFICATION SENT TO DEFENDANT 00/00/00  
 03/16/05 NOTICE OF APPEAL FILED, TRNSFR 00/00/00  
 03/21/05 NOTICE OF NOTICE OF APP MAILED 00/00/00  
 03/21/05 HEARING DATE ASSIGNED 03/25/05 1713  
 03/25/05 ILL STATE APPELLATE DEF APPTD 00/00/00  
 BIEBEL, PAUL JR.  
 03/25/05 O/C FREE REPT OF PROCD ORD N/C 00/00/00  
 BIEBEL, PAUL JR.  
 03/25/05 MEMO OF ORDS & NOA PICKED-UP 00/00/00  
 BIEBEL, PAUL JR.  
 04/06/05 APPELLATE COURT NUMBER ASGND 00/00/00 05-0847  
 05/19/05 REPT OF PRCDS ORD FR CRT RPT 00/00/00  
 05/24/05 CLR RECD BY APP COUNSEL 00/00/00  
 STATE APPELLATE DEFENDER  
 06/29/05 SUPP TRAN PRO REC/FILE CLK OFF 00/00/00  
 07/13/05 SUPPL REPORT OF PRCD PREPARED 00/00/00  
 07/14/05 SUPPL REC RECD BY APPL COUNSEL 00/00/00  
 STATE APPELLATE DEFENDER  
 08/10/05 REPT OF PRCDS ORD FR CRT RPT 00/00/00  
 08/11/05 TRANS PROC REC/FILED CLKS OFF 00/00/00  
 08/13/05 REPORT OF PROCEEDINGS PREPARED 00/00/00  
 08/19/05 REPRT/PROCD REC BY APP ATTRY 00/00/00  
 STATE APPELLATE DEFENDER  
 07/06/06 MANDATE FILED 07/18/06 1701  
 07/18/06 REVIEW COURT AFFIRMANCE 00/00/00  
 BROWN, MICHAEL  
 07/18/06 CASE ASSIGNED 07/21/06 1731  
 TO CORRECT MITT  
 BROWN, MICHAEL

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 012

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3006401

KEVIN PATTERSON

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION  
07/21/06 SPECIAL ORDER 00/00/00  
CORRECTED MITT TO ISSUE PER APPLATE CT  
DARCY, DANIEL P.  
11/17/06 MANDATE FILED 12/01/06 1701  
12/01/06 REVIEW COURT AFFIRMANCE 00/00/00  
BIEBEL, PAUL JR.

I hereby certify that the foregoing has  
been entered of record on the above  
captioned case.  
Date 05/16/07

---

DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA ex rel.	)	
KEVIN PATTERSON,	)	
	)	
	Petitioner,	) Case No. 07 C 6853
v.	)	
	)	
GENE JUNGWIRTH, Warden,	)	Judge Joan B. Gottschall
	)	
	Respondent.	)

**ORDER**

Following a bench trial in the Circuit Court of Cook County, Illinois, petitioner Kevin Patterson was convicted of unlawful use of a weapon by a felon and three counts of attempted armed robbery, and was sentenced as a Class X offender to eighteen years' imprisonment. On direct appeal, the state appellate court affirmed petitioner's convictions but vacated his sentence and ordered resentencing because petitioner was not eligible for a Class X sentence. On remand, a different trial court judge conducted a new sentencing hearing and resentenced petitioner to eighteen years' imprisonment. On appeal following resentencing, petitioner argued that the state appellate court should either reduce his sentence or remand for a third sentencing hearing. The state appellate court affirmed. Petitioner filed a petition for leave to appeal ("PLA") to the Illinois Supreme Court that was denied on December 3, 2003. On November 24, 2004, petitioner filed a pro se postconviction petition in the state trial court. The trial court dismissed the petition and the appellate court affirmed on May 31, 2006. The Illinois Supreme Court denied petitioner's PLA on September 27, 2006. On November 16, 2007<sup>1</sup>, petitioner filed his federal habeas petition under 28 U.S.C. §

---

<sup>1</sup> Petitioner's petition is signed and dated November 16, 2007. Petitioner claims that he did not actually mail the petition until November 27, 2007. Because this discrepancy does not alter the court's analysis in any way, the court will assume that the earlier date is the relevant

2254. Respondent has moved to dismiss the petition as untimely. For the reasons stated below, that motion is granted.

Congress has established a one-year limitations period governing motions for collateral relief under 28 U.S.C. § 2254. The limitations period runs from the latest of: (1) the date on which the judgment of conviction becomes final; (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action; (3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

If petitioner's limitations period is calculated from the date his "judgment of conviction" became final, his petition is untimely. As the respondent points out, petitioner's conviction became final on March 3, 2004, the date on which the time expired to file a petition for a writ of certiorari to the United States Supreme Court. *See, e.g., Anderson v. Litscher*, 281 F.3d 672, 674-75 (7th Cir. 2002) (limitations period under Section 2244(d)(1)(A) begins to run after 90-day period during which a state prisoner may file petition for writ of certiorari). Petitioner waited 266 days, or until November 24, 2004, to file his state postconviction petition. Pursuant to 28 U.S.C. § 2244(d)(2), the period during which his state postconviction petition was pending does not count in calculating the one-year period. Therefore, the time between November 24, 2004 and September 27, 2006 (the date on which the Illinois Supreme Court denied his PLA) is tolled. However, petitioner allowed

---

date.

another 415 days to lapse before he filed his federal habeas petition on November 16, 2007. Adding the 266 days (time between final conviction and filing of state postconviction petition) to the 415 days (time between state postconviction petition and filing of federal habeas petition), petitioner allowed a total of 681 days to elapse, which makes his federal habeas petition untimely.

Petitioner's only other option is to show that one of the other starting points listed in 28 U.S.C. § 2244(d)(1) applies here. To that end, petitioner argues that the state created an obstacle to his filing a federal habeas petition by denying his requests for documents pursuant to the Illinois Freedom of Information Act. Respondent counters by arguing that the Chicago Police Department's ("CPD") denial of his request for documents did not prevent him from filing a habeas petition. Petitioner could have, respondent argues, filed his petition and provided sufficient factual support for his putative claims without the documents he requested from the police department. Respondent points to *Lloyd v. Van Natta*, 296 F.3d 630 (7th Cir. 2002) for support. In *Lloyd*, the Seventh Circuit held that there was no state impediment to filing a petition merely because the state failed to provide the petitioner with a copy of his trial transcript. 296 F.3d at 633. Respondent points out that petitioner, who apparently never received the documents he requested, was able to file the instant petition without them.

The court agrees that the reasoning in *Lloyd* applies in this case. In discussing what kind of impediment is necessary to qualify under 28 U.S.C. § 2244(d)(1)(B), the Seventh Circuit has stressed that "the plain language of the statute makes clear that whatever constitutes an impediment must *prevent* a prisoner from filing his petition." *Lloyd*, 296 F.3d at 633 (emphasis in original). In this case, petitioner has not shown that the state created an impediment which prevented him from filing his federal habeas petition. As was the case in *Lloyd*, petitioner in fact filed his federal habeas

petition without use of the documents. As the Seventh Circuit made clear in *Lloyd*, petitioner could have, and should have, filed his federal habeas petition and then utilized the discovery mechanisms in place for federal habeas petitioners. 296 F.3d at 633

Next, petitioner argues that he should receive the benefit of equitable tolling for a number of reasons. Under the common law doctrine, equitable tolling is available only if the plaintiff has been pursuing his rights diligently and an external impediment has prevented a complaint from being timely filed. *See e.g., Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). Equitable tolling excuses an untimely filing when “[e]xtraordinary circumstances far beyond the litigant’s control . . . prevented timely filing.” *United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir. 2000). As an initial matter, the Seventh Circuit has not explicitly acknowledged that equitable tolling is available to a § 2254 petitioner. *Modrowski v. Mote*, 322 F.3d 965, 967 n.2 (7th Cir. 2003) (reserving issue of whether the enumerated statutory tolling provisions for § 2254 indicates a congressional intent to replace the common law doctrine of equitable tolling); *Nolan v. United States*, 358 F.3d 480, 483-84 (7th Cir. 2004) (stating that “it is unclear what room remains for importing the judge-made doctrine of equitable tolling into § 2254 claims, given the express tolling provisions incorporated in the statute”). In any event, the court need not decide the issue here as petitioner has failed to show any extraordinary circumstances that would justify tolling in this case.

First, petitioner argues that equitable tolling is justified in this case because the CPD failed to provide him with certain documents he requested. As noted above, the Seventh Circuit has yet to find an extraordinary circumstance that would warrant equitable tolling in the collateral relief context. *See Modrowski*, 322 F.3d at 967 (holding that attorney incapacity does not warrant equitable tolling); *Lloyd*, 296 F.3d at 633 (ruling that lack of access to trial transcripts does not

warrant tolling); *Taliani v. Chrans*, 189 F.3d 597, 598 (7th Cir. 1999) (holding that attorney's negligence does not warrant tolling); *Marcello*, 212 F.3d at 1010 (ruling that tolling was not justified by opaque law and death of attorney's father). Relying again on the similarities between this case and *Lloyd*, the court notes that the Seventh Circuit rejected the argument in *Lloyd* that the state's failure to provide a copy of the trial transcript warranted tolling. *Lloyd*, 296 F.3d at 633. Based on this holding, and the litany of cases in which the Seventh Circuit failed to find "extraordinary circumstance[s]" necessary to justify tolling, the court cannot conclude that the failure of the CPD to turn over requested documents was so extraordinary as to justify tolling. Nor can petitioner show that the alleged "impediment" actually prevented him from filing his habeas petition. In fact, petitioner did file his petition without having received the documents. Petitioner's tolling argument, based on the missing documents, fails.

Next, petitioner argues that tolling is warranted because he received ineffective assistance of counsel. Specifically, he contends that his attorney on direct appeal did not notify him that the limitations period would run between the date his conviction became final and the date he filed a state postconviction petition. This argument is not persuasive for two reasons. One, as respondent points out, even if all of the time between his conviction becoming final and his filing his postconviction petition were equitably tolled, the petition would still be time-barred because petitioner allowed 415 days to lapse between the conclusion of his postconviction proceedings and his filing the instant federal habeas petition. Second, the Seventh Circuit has held that attorney negligence does not warrant tolling. *Taliani*, 189 F.3d at 598 (rejecting tolling argument where petitioner's attorney miscalculated the limitations period because of inadequate research). "The rationale is that attorney negligence is not extraordinary and clients, even if incarcerated, must

'vigilantly oversee,' and ultimately bear responsibility for, their attorneys' actions or failures."

*Modrowski*, 322 F.3d at 968. For both these reasons, tolling is not applicable here.

Finally, petitioner claims that he is actually innocent, and is thus entitled to equitable tolling. The Seventh Circuit has already rejected such an argument. *Araujo v. Chandler*, 435 F.3d 678, 681 (7th Cir. 2005) (holding that actual innocence is not a freestanding exception to the time limits in Section 2244(d)).

### **Conclusion**

For all the reasons explained above, respondent's motion to dismiss is granted.

ENTER:

/s/  
JOAN B. GOTTSCHALL  
United States District Judge

DATED: May 16, 2008

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEVIN PATTERSON

PETITIONER

v.

GENE JUNGWIRTH

RESPONDENT

) Case No. 07 C 6853

PROOF/CERTIFICATE OF SERVICE

TO: Asst. Attorney General

TO:

ERIC W. TRUETT  
100 W. RANDOLPH #12F1  
Chicago, IL 60601

PLEASE TAKE NOTICE that on JUNE 13, 2008, I have placed the documents listed below in the institutional mail at EAST MOLINE Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service:

MOTION FOR RELIEF OF JUDGEMENT

Pursuant to 28 USC 1746, 18 USC 1621 or 735 ILCS 5/109, I declare, under penalty of perjury, that I am a named party in the above action, that I have read the above documents, and that the information contained therein is true and correct to the best of my knowledge.

DATE: JUNE 13, 2008

/s/ Kevin Patterson  
NAME: KEVIN PATTERSON

IDOC#: A-83515

EAST MOLINE Correctional Center  
100 HILLCREST ROAD  
EAST MOLINE, IL 61244